No: 53819-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

IN RE: APPEAL OF MOTION TO DISMISS ORDER OF SALE

CITIMORTGAGE INC.

Appellee,

And

Paul Moseley

Appellant

Appeal from the Superior Court of Jefferson County

Case No: 16-2-00216-1

APPELLANT'S REPLY BRIEF

Paul Moseley

Appellant Pro Se

101 Fleet Drive

Port Ludlow, WA 98365

360-301-9962

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Rebuttal to Respondents Assignment of Errors

A. Reply to Error #1: Contrary to the Respondent's claims, The subject Deed of Trust defines MERS as the beneficiary of the subject account. CITI MORTGAGE INC., the respondent, was the initial Servicer on the account but subsequently transferred the account to CENLAR as established in Appellant's opening brief. MERS is not a valid Beneficiary pursuant the Washington Deed of Trust Act and confirmed in *Bain v. Metro. Mortgage. Group, Inc., et al 175 Wn. 2d 83, 285 P.3d 34(2012).*

B. Appellant's Reply to Error #2: Contrary to the Respondent's claims, the Appellant at no time appeared, tried to appear on behalf of another nor make arguments on behalf of another as claimed by respondent and contrary to the "motives" superimposed by the Respondent, the appellant offered the court his suggested corrections for the judicial equity of all parties including that of the Plaintiff in the matter.

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II. APPELLANTS'S REBUTTAL IN ARGUMENT

REPLY TO ASSIGNMENT OF ERROR NO. 1: CITI MORTGAGE INC. (CMI) here after, is a corporation which has no standing for several reasons. First Fannie Mae is the investor, MERS is listed as the beneficiary on the Deed of Trust and the Respondent was the servicer at the inception of the account. Since that time, if in fact an assignment was made to CMI from MERS it would be invalid because MERS cannot assign what it does not hold. It was well established in *Bain v. Metro* that MERS is not a valid beneficiary in the STATE of Washington. It was held that MERS as a beneficiary would violate the DEED of TRUST ACT. This is itself is not crime or a violation against the consumer, but it does speak to a more important point. If the STATE of Washington has ruled MERS is not a valid beneficiary, which they have, then also any assignment that MERS might try to make would also be invalid because it cannot assign what it does not hold. (emphasis added). **This was also confirmed in Bain v. Metro.** In New York a borrower's motion to dismiss the foreclosure complaint was granted (on appeal) *Citibank, N.A. v. Herman, 125 A.D.3d 587, 3 N.Y.S.3d 379 (2d Dept. 2015).* While this case may not be used as a legal authority, the arguments are the same and even more relevant pursuant case authority in the STATE of Washington. While CMI also claims to hold the Note and Assignment as in the New

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York case, it has not shown that it delivered the note to MERS so that it could claim a valid Assignment to CMI when the corporate Deed of Assignment was made. It is true as asserted, that the Appellant believes that Respondent is not the correct party of interest. The Appellant does not however believe, as asserted by the Respondent, "that a foreclosure sale cannot proceed until CENLAR is named as Plaintiff." CENLAR is simply a debt collector and has no secured interest in the account. Therefore, CENLAR may have a valid claim but CENLAR would not have a secured interest until a valid assignment was properly made. In this case that has not happened. In-order for a valid assignment to take place, the Chain of Title must be perfected. The second reason the Appellant believes CMI does not have standing to foreclose is a common-sense argument. The Appellant's contention is that if CENLAR has the power to provide an alternative to foreclosure and in-fact CENLAR has offered such an alternative, and if CMI the plaintiff and Respondent, at the same time has the power to Foreclose simultaneously, which is what CMI is attempting to do in this case; Then it becomes impossible for the consumer to make a deal with on entity while being foreclosed upon by another. That very act as described in the Appellant's opening brief is a form of dual tracking. It is also the very reason a whole new consumer protection Bureau was formed. The Respondent would like the Court to believe that the law is

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inapplicable because they have conveniently split the action between two separate entities and therefore does not meet the criteria for 12 CFR § 1024.41(k). The Respondent might be correct if the rules under section (k) stopped at subsection (3), but in this case the disregard for subsection (5) becomes a problem. which reads: "**(5) *Pending loss mitigation offers.*** A transfer does not affect a borrower's ability to accept or reject a loss mitigation option offered under paragraph (c) or (h) of this section. If a transferee servicer acquires the servicing of a mortgage loan for which the borrower's time period under paragraph (e) or (h) of this section for accepting or rejecting a loss mitigation option offered by the transferor servicer has not expired as of the transfer date, the transferee servicer must allow the borrower to accept or reject the offer during the unexpired balance of the applicable time period." The spirit of this law is obvious in the title and the application is absolutely relevant, but Respondent claims it is "Wholly inapplicable." Not only does the Respondent lack standing to foreclose but the fact that an offer was extended by CENLAR dated November 14th 2019 and the time required by the law for response was not allowed by the Respondent, Shows what great lengths banking institutions will go subvert the law, commit Duel Tracking and worse. The Respondent obtained an Order of Sale from the

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trial court just 10 days prior to CENLAR's offer. This action is not denied by the Respondent, the question to the Court, is this legal or even ethical business practices? How many protective agencies, laws, and bureau's will need to be created to stop the creative and deceptive abuses that the banks perpetuate on their victims? The Court should not let the Respondent foreclose on an account that lacks Standing and acts in bad faith. The Respondent claims that it "[is] clear that Respondent is still the beneficiary of the loan and the correct Plaintiff…" That is precisely what is not clear or proven. (emphasis added).

REPLY TO ASSIGNMENT OF ERROR NO. 2: The Respondent claims that the Appellant improperly attempted to litigate a matter on behalf of Michelle Moseley and superimposes an assertion that "it was in an effort to prevent a foreclosure sale for his own benefit."

Contrary to the Respondent's claims, the Appellant at no time tried to appear on behalf of another nor make arguments on behalf of Michelle Moseley as claimed by Respondent. Contrary to the motives superimposed by the Respondent, the Appellant simply offered the issue to the trial court for correction in order to promote the judicial equity of all parties including that of the Plaintiff in the matter. This issue was used by the Respondent as a Red Herring suggesting that the Appellant aimed to

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represent another party in order to distract the trial court from the real issues. This tactic was successful in the trail court and rendered a hasty disposition, not allowing time for the most critical issues on the record to be considered at hearing. The parties were not proper and the trial court should have been notified. As to form of notification seems immaterial from a pro se perspective. The Appellant did not suppose that would be to his benefit, as the Respondent asserts. Michelle Moseley was never served in the action and upon learning of the case against her, she filed a motion to vacate the summary judgement. The Respondent would have had to start the entire action over from the beginning because it had failed to serve the parties properly. In order to remedy the debacle, the Respondent quickly negotiated with Michelle Moseley and her attorney to draft a side deal called a "release." As explained in the Appellants opening brief this information was offered to the trial court to promote judicial equity and more-over protect the Respondent from a law suit in the event the Respondent did not keep to the provisions of the release. The Appellant will not belabor the issue as it was adequately explained in the opening brief and on the record and is of no consequence to the Appellant. It has only served as a distraction for the Respondent to use as a tool to muddy the waters. In Defense of the Appellants supposed motives asserted in Respondent's response, claims that this issue was pretext and self-serving

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and, by way of context, suggests that the Appellant's motion "to effectively stop the sale of his home at foreclosure auction," was solely tied to this issue of release. Of course, it was not. The Respondent suggests that the Appellant could have filed a simple memorandum with the trial court explaining his concerns or contact Respondent to discuss the issue. In fact, attempts were made to contact both Michelle Moseley's attorney and Davis Write Tremaine (CMI's previous counsel of record). Both parties representatives failed to reply and after several attempts to each, the pro se Appellant proceeded in the best way he thought appropriate.

CONCLUSION

By Red Herring assertions the Respondent aims to twist the issues and distract the Court, suggesting some self-serving motive of the Appellant. When-in-reality, the Respondent has been bailed out by the tax-payer for the mis-deeds leading up to the bank bailout of 2008, CMI collected credit default insurance on defaulted loans, failed to correct or explain notices to the customer of admitted billing errors, refused the Appellant's full and exact satisfaction of the obligation including fees in the sum of approximately $283K. Now CMI is coming after the Appellants real property, theft by deception. At this time Respondent has transferred Servicing to CENLAR who is currently working with the Appellant to find an alternative to foreclosure, and at the same time the Respondent illegally proceeds with foreclosure actions. Duel Tracking is

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unethical, disingenuous and illegal. The Court should not allow these financial institutions to ping pong their customers with frustration and creative schemes to deceive the consumer. Procedure in this case has been thrown out the window by the trial court. The Appellant's last hope is upon the grace of the Appellate Court to consider these arguments carefully.

Dated: March 3, 2020

By_____

Paul Moseley, Appellant

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CERTIFICATE OF SERVICE

Court of Appeals Case No. 53819-9-II

Superior Court Case No. 16-2-00216-1

The undersigned hereby certifies that a true and accurate copy of the foregoing filed with the clerk of the Washington State Court of Appeals, Division Two and was mailed to the attorney of record for the Appellee, CitiMortgage Inc. an entity lacking standing in a matter of complaint filed December 7th 2016, this 30th, day of March, 2020.

The office of:
Warren Lance
McCarthy & Holthus, LLP
108 1st Ave S, Ste 300
Seattle, WA 98104

Declared under penalty of perjury under the laws of the State of Washington,

This 3rd day of March, 2020

Paul Moseley
Served by USPS Mail